

**ASSEMBLY BILL**

**No. 1208**

---

---

**Introduced by Assembly Member Cogdill**  
(Coauthor: Senator Florez)

February 21, 2003

---

---

An act to amend Section 1091 of the Government Code, relating to conflicts of interest.

LEGISLATIVE COUNSEL'S DIGEST

AB 1208, as introduced, Cogdill. Conflicts of interest.

Existing law prohibits certain public officials and employees from being financially interested in any contract made by them in their official capacity, or by any board of which they are members. An officer is not deemed to be interested in a contract entered into by a body or board of which the officer is a member if the officer has only a remote interest in the contract and other requirements are met. A remote interest is required to be publicly disclosed, and thereafter the public body may authorize, approve, or ratify the contract in question, but the officer or employee with the remote interest is disqualified from voting.

This bill additional would define as a remote interest that interest of a person who has a financial interest in a contract, if (1) the person is a board member of a special district serving a population of less than 5,000 that is either a landowner voter district or an irrigation district meeting specified criteria, (2) the contract is for either the operation, maintenance, repair, or replacement of the district's property or facilities or the acquisition of property for the district, and meets specified criteria, (3) the person did not participate in the formulation of the contract on behalf of the district, and (4) at a public meeting, the

governing body of the district, after review of written documentation, determines that the contract is in the best interests of the district.

This bill also would provide that, if a party to any proceeding challenges any fact or matter required to qualify as a remote interest under these provisions relating to a special district, the district shall bear the burden of proving this fact or matter.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1091 of the Government Code is  
2 amended to read:

3 1091. (a) An officer shall not be deemed to be interested in  
4 a contract entered into by a body or board of which the officer is  
5 a member within the meaning of this article if the officer has only  
6 a remote interest in the contract and if the fact of that interest is  
7 disclosed to the body or board of which the officer is a member and  
8 noted in its official records, and thereafter the body or board  
9 authorizes, approves, or ratifies the contract in good faith by a vote  
10 of its membership sufficient for the purpose without counting the  
11 vote or votes of the officer or member with the remote interest.

12 (b) As used in this article, “remote interest” means any of the  
13 following:

14 (1) That of an officer or employee of a nonprofit corporation,  
15 except as provided in paragraph (8) of subdivision (a) of Section  
16 1091.5.

17 (2) That of an employee or agent of the contracting party, if the  
18 contracting party has 10 or more other employees and if the officer  
19 was an employee or agent of that contracting party for at least three  
20 years prior to the officer initially accepting his or her office and the  
21 officer owns less than 3 percent of the shares of stock of the  
22 contracting party; and the employee or agent is not an officer or  
23 director of the contracting party and did not directly participate in  
24 formulating the bid of the contracting party.

25 For purposes of this paragraph, time of employment with the  
26 contracting party by the officer shall be counted in computing the  
27 three-year period specified in this paragraph even though the  
28 contracting party has been converted from one form of business  
29 organization to a different form of business organization within



1 three years of the initial taking of office by the officer. Time of  
2 employment in that case shall be counted only if, after the transfer  
3 or change in organization, the real or ultimate ownership of the  
4 contracting party is the same or substantially similar to that which  
5 existed before the transfer or change in organization. For purposes  
6 of this paragraph, stockholders, bondholders, partners, or other  
7 persons holding an interest in the contracting party are regarded as  
8 having the “real or ultimate ownership” of the contracting party.

9 (3) That of an employee or agent of the contracting party, if all  
10 of the following conditions are met:

11 (A) The agency of which the person is an officer is a local  
12 public agency located in a county with a population of less than  
13 4,000,000.

14 (B) The contract is competitively bid and is not for personal  
15 services.

16 (C) The employee or agent is not in a primary management  
17 capacity with the contracting party, is not an officer or director of  
18 the contracting party, and holds no ownership interest in the  
19 contracting party.

20 (D) The contracting party has 10 or more other employees.

21 (E) The employee or agent did not directly participate in  
22 formulating the bid of the contracting party.

23 (F) The contracting party is the lowest responsible bidder.

24 (4) That of a parent in the earnings of his or her minor child for  
25 personal services.

26 (5) That of a landlord or tenant of the contracting party.

27 (6) That of an attorney of the contracting party or that of an  
28 owner, officer, employee, or agent of a firm ~~which~~ *that* renders, or  
29 has rendered, service to the contracting party in the capacity of  
30 stockbroker, insurance agent, insurance broker, real estate agent,  
31 or real estate broker, if these individuals have not received and will  
32 not receive remuneration, consideration, or a commission as a  
33 result of the contract and if these individuals have an ownership  
34 interest of 10 percent or more in the law practice or firm, stock  
35 brokerage firm, insurance firm, or real estate firm.

36 (7) That of a member of a nonprofit corporation formed under  
37 the Food and Agricultural Code or a nonprofit corporation formed  
38 under the Corporations Code for the sole purpose of engaging in  
39 the merchandising of agricultural products or the supplying of  
40 water.

1 (8) That of a supplier of goods or services when those goods or  
2 services have been supplied to the contracting party by the officer  
3 for at least five years prior to his or her election or appointment to  
4 office.

5 (9) That of a person subject to the provisions of Section 1090  
6 in any contract or agreement entered into pursuant to the  
7 provisions of the California Land Conservation Act of 1965.

8 (10) Except as provided in subdivision (b) of Section 1091.5,  
9 that of a director of or a person having an ownership interest of 10  
10 percent or more in a bank, bank holding company, or savings and  
11 loan association with which a party to the contract has a  
12 relationship of borrower or depositor, debtor or creditor.

13 (11) That of an engineer, geologist, or architect employed by a  
14 consulting engineering or architectural firm. This paragraph  
15 applies only to an employee of a consulting firm who does not  
16 serve in a primary management capacity, and does not apply to an  
17 officer or director of a consulting firm.

18 (12) That of an elected officer otherwise subject to Section  
19 1090, in any housing assistance payment contract entered into  
20 pursuant to Section 8 of the United States Housing Act of 1937 (42  
21 U.S.C. Sec. 1437f) as amended, provided that the housing  
22 assistance payment contract was in existence before Section 1090  
23 became applicable to the officer and will be renewed or extended  
24 only as to the existing tenant, or, in a jurisdiction in which the  
25 rental vacancy rate is less than 5 percent, as to new tenants in a unit  
26 previously under a Section 8 contract. This section applies to any  
27 person who became a public official on or after November 1, 1986.

28 (13) That of a person receiving salary, per diem, or  
29 reimbursement for expenses from a government entity.

30 (14) *That of a person who has a financial interest in a contract,*  
31 *if all of the following conditions are met:*

32 (A) *The agency of which the person is a board member is a*  
33 *special district serving a population of less than 5,000 that is either*  
34 *of the following:*

35 (i) *A landowner voter district, as defined in Section 56050.*

36 (ii) *An irrigation district formed pursuant to Chapter 1*  
37 *(commencing with Section 205000) of Part 1 of Division II of the*  
38 *Water Code, where the primary purpose is the distribution of water*  
39 *for farming and the district provides no other general public*  
40 *services.*

1     (B) *The contract is for either of the following:*

2     (i) *The operation, maintenance, repair, or replacement of the*  
3 *district's property or facilities. The contract will result in*  
4 *materially less expense to the district than the expense that would*  
5 *result under reasonably available alternatives and review of those*  
6 *alternatives is documented in records available for public*  
7 *inspection.*

8     (ii) *The acquisition of property that the governing board of the*  
9 *district has determined is necessary for the district to carry out its*  
10 *functions at a price not exceeding the value of the property, as*  
11 *determined in a record available for public inspection by an*  
12 *appraiser who is a member of a recognized organization of*  
13 *appraisers.*

14     (C) *The person did not participate in the formulation of the*  
15 *contract on behalf of the district.*

16     (D) *At a public meeting, the governing body of the district, after*  
17 *review of written documentation, determines that the contract is in*  
18 *the best interests of the district.*

19     (c) This section is not applicable to any officer interested in a  
20 contract who influences or attempts to influence another member  
21 of the body or board of which he or she is a member to enter into  
22 the contract.

23     (d) The willful failure of an officer to disclose the fact of his or  
24 her interest in a contract pursuant to this section is punishable as  
25 provided in Section 1097. That violation does not void the contract  
26 unless the contracting party had knowledge of the fact of the  
27 remote interest of the officer at the time the contract was executed.

28     (e) *If a party to any proceeding challenges any fact or matter*  
29 *required by subparagraph (B), (C), or (D) to qualify as a remote*  
30 *interest under paragraph (14), the district shall bear the burden of*  
31 *proving this fact or matter.*

